

Housing Assistance Payments Contract, Part B Subsidized Unit Version

Section 8 Tenant-Based Assistance Rental Certificate Program

U.S. Department of Housing
and Urban Development
Office of Public and Indian Housing

Part B: Contract Terms

1. Definitions

Certificate program. The Section 8 rental certificate program. Under this program, HUD provides funds to an HA for rent subsidy on behalf of eligible families. The HA has entered into this HAP contract to provide assistance to the family under the certificate program.

Contract rent. The total monthly rent payable to the owner for the contract unit. The contract rent is the sum of the tenant rent plus the HA housing assistance payment to the owner.

Contract unit. The housing unit rented by the tenant. (The contract unit is described in Part A.)

Family. The persons who may reside in the unit with assistance under the program.

HA. Housing agency.

HAP contract. This housing assistance payments contract. The contract consists of Part A and Part B.

Housing quality standards (HQS). The minimum quality standards for housing assisted under the Section 8 tenant-based programs.

HQS. Housing quality standards.

HUD. The U.S. Department of Housing and Urban Development.

HUD requirements. HUD requirements for the Section 8 programs. HUD requirements are issued by HUD headquarters, as regulations, *Federal Register* notices or other binding program directives.

Lease addendum. The lease language required by HUD.

Premises. The building or complex in which the contract unit is located, including common areas and grounds.

Program. The HUD Section 8 certificate program.

Section 8. Section 8 of the United States Housing Act of 1937 (42 United States Code 1437f).

Tenant. The tenant is the family member who leases the contract unit from the owner.

Tenant rent. The portion of the contract rent payable by the family, as determined by the HA in accordance with HUD requirements.

2. Purpose

- a. This is a HAP contract between the HA and the owner.
- b. The family is a participant in the Section 8 certificate program. The purpose of the HAP contract is to assist the tenant to lease a dwelling unit from the owner for occupancy by the family with tenant-based assistance under the certificate program.
- c. The HA must pay housing assistance payments to the owner in accordance with the HAP contract. HUD provides funds to the HA to pay housing assistance payments for eligible families.

3. Lease of Contract Unit

- a. The owner has leased the contract unit to the tenant for occupancy by the family with assistance under the Section 8 certificate program.

- b. The lease must include word-for-word all provisions of the lease addendum that is required by HUD. If there is any conflict between the lease addendum and any other provisions of the lease, the language of the HUD-required lease addendum shall control.
- c. The lease has been approved by the HA. The owner certifies that the lease has been executed by the tenant and the owner in the form approved by the HA. The lease may not be revised unless the HA gives notice that the lease revision has been approved.
- d. The HA has not screened the family's behavior or suitability for tenancy. Such screening is the owner's own responsibility.

4. Use and Occupancy of Contract Unit

- a. The HAP contract only applies to the family and the contract unit.
- b. The composition of the family residing in the contract unit must be approved by the HA. The members of the family approved by the HA at execution of the HAP contract are listed in Part A of the HAP contract.

5. Maintenance and Inspection

- a. The owner must maintain the contract unit and premises in accordance with the HQS.
- b. The lease must specify what utilities and appliances are to be supplied by the owner, and what utilities and appliances are to be supplied by the tenant.
- c. The owner is not responsible for a breach of the HQS that is caused by any of the following:
 - i. The family fails to pay for any utilities that the owner is not required to pay for under the lease, but which are to be paid by the tenant;
 - ii. The family fails to provide and maintain any appliances that the owner is not required to provide under the lease, but which are to be provided by the tenant; or
 - iii. Any member of the household or guest damages the contract unit or the premises (damages beyond ordinary wear and tear).
- d. If the owner does not maintain the unit in accordance with the HQS, HA remedies for such breach of the HQS include suspension of housing assistance payments, abatement or other reduction of housing assistance payments, termination of housing assistance payments, and termination of the HAP contract. The HA may not exercise such remedies against the owner because of an HQS breach for which the family is responsible (as described in section 5.c), and that is not caused by the owner.
- e. The HA will not make any housing assistance payments for a dwelling unit that fails to meet the HQS, unless the owner corrects the defect within the period specified by the HA and the HA verifies the correction. If a defect is life threatening, the owner must correct the defect within no more than 24 hours. For other defects, the owner must correct the defect within the period specified by the HA.
- f. The HA will inspect the contract unit and premises at least annually and at such other times as the HA determines neces-

sary, to assure that the unit is in accordance with the HQS.

- g. The HA must notify the owner of defects shown by the inspection.
- h. Maintenance and replacement (including redecoration) must be in accordance with the standard practice for the building concerned as established by the owner.

6. Term of HAP Contract

- a. **Relation to lease term.** The term of the HAP contract begins on the first day of the term of the lease, and terminates on the last day of the term of the lease.
 - b. **When HAP contract terminates.** The term of the HAP contract terminates if any of the following occurs:
 - i. The lease terminates;
 - ii. The HAP contract terminates; or
 - iii. The HA terminates program assistance for the family.
 - c. **Termination of HAP contract.**
 - i. The HA may terminate program assistance for the family for any grounds authorized in accordance with HUD requirements. If the HA terminates program assistance for the family, the HAP contract terminates automatically.
 - ii. If the family moves out of the unit, the HAP contract terminates automatically.
 - iii. The HAP contract terminates automatically 180 calendar days after the last housing assistance payment to the owner.
 - iv. The HA may terminate the HAP contract if the HA determines, in accordance with HUD requirements, that available program funding is not sufficient to support continued assistance for families in the program.
 - v. The HA may terminate the HAP contract if the HA determines that:
 - (1) The contract unit does not meet the HQS space standards because of an increase in family size or a change in family composition, or
 - (2) The contract unit is larger than appropriate for the family size and composition.
 - vi. If the family breaks up, the HA has discretion to determine which members of the family continue to receive assistance in the program. The HA may terminate the HAP contract, or may continue housing assistance payments on behalf of family members who remain in the contract unit.
 - vii. The HA may terminate the HAP contract if the HA determines that the owner has breached the HAP contract.
 - viii. The HAP contract terminates automatically and housing assistance payments on behalf of the family shall terminate if the contract unit ceases to be a subsidized unit. The term “subsidized unit” means a unit for which the rent is subsidized under any of the following programs: Section 221(d)(3) BMIR, Section 202, Section 236 (insured or noninsured), FmHA 515 interest credit, or State or local subsidized program. (The applicable program is checked on Part A of this contract.)
- #### **7. Termination of Tenancy by Owner**
- a. The owner may only terminate the tenancy in accordance with the lease.
 - b. The owner must give notice of termination in accordance with HUD requirements.

- c. The owner must give the HA a copy of any owner eviction notice to the tenant at the same time that the owner gives notice to the tenant. Owner eviction notice means a notice to vacate, or a complaint or other initial pleading used under State or local law to commence an eviction action.

8. Tenant Rent

- a. The amount of the tenant rent is determined by the HA in accordance with HUD requirements. The amount is subject to change during the term of the HAP contract. Any changes in the amount of the tenant rent will be effective on the date stated in a notice by the HA to the family and the owner.
- b. The amount of the tenant rent is the maximum amount the owner can require the family to pay for rent of the contract unit, including all services, maintenance and utilities to be provided by the owner in accordance with the lease.
- c. The owner may not demand or accept any rent payment from the tenant in excess of the tenant rent, and must immediately return any excess rent payment by the tenant.
- d. The family is not responsible for payment of the portion of contract rent covered by the housing assistance payment under the HAP contract between the owner and the HA. The owner may not terminate the tenancy of the family for nonpayment of the HA housing assistance payment.

9. Housing Assistance Payment

- a. **When paid.**
 - i. During the term of the HAP contract, the HA must make housing assistance payments to the owner on behalf of the family. Housing assistance payments will only be paid to the owner during the lease term, and while the family is residing in the unit.
 - ii. The HA must pay the housing assistance payment promptly when due to the owner.
- b. **Amount of payment.**
 - i. The HA housing assistance payment to the owner shall be equal to:
 - (1) The contract rent minus
 - (2) The tenant rent.
 - ii. The amount of the housing assistance payment will be determined by the HA in accordance with HUD requirements.
 - iii. The amount of the housing assistance payment is subject to change during the HAP contract term. Any change in the amount of the housing assistance payment will be effective on the date stated in a notice by the HA to the owner.
- c. **Pro-ration.** The housing assistance payment for the first and last month of the HAP contract term will be pro-rated for a partial month.
- d. **Limit of HA responsibility.** The HA will not pay the tenant rent, or any claim by the owner against the family. The HA is only responsible for making housing assistance payments to the owner in accordance with the HAP contract.
- e. **Application of payment.** The housing assistance payment is credited toward the monthly contract rent to the owner under the lease.
- f. **Family move-out.** If the family moves out of the unit, the HA will not make any housing assistance payment to the owner for any month after the month when the family moves out.
- g. **Conditions for housing assistance payments.** Unless the owner complies with all provisions of the HAP contract, the owner

does not have a right to receive housing assistance payments.

- h. **Overpayment to owner.** If the HA determines that the owner is not entitled to the housing assistance payment or any part of it, the HA, in addition to other remedies, may deduct the amount of the overpayment from any amounts due the owner (including amounts due under any other Section 8 assistance contract).

10. Adjustment of Contract Rent: Changes in Subsidized Rent

- a. When the subsidized rent for the contract unit is changed after commencement of the term of this contract, the contract rent shall be automatically adjusted by the HA to equal the amount of the subsidized rent. The amount of the subsidized rent shall be determined in accordance with HUD requirements.
- b. The owner shall provide the HA with any information required by the HA relating to the amount of the subsidized rent for the contract unit. The owner shall notify the HA promptly of any change in the subsidized rent for the unit and of any other change of circumstances which would affect the amount of the contract rent.
- c. Notwithstanding any other provision of this section:
 - i. The owner shall not have any right to any upward adjustment of the contract rent unless the contract unit meets the HQS, and the owner is in compliance with the lease and the HAP contract.
 - ii. The contract rent may not exceed the rents charged for comparable unassisted units, as determined by the HA in accordance with HUD requirements.

11. Owner Certification

During the term of this contract, the owner certifies that:

- a. The owner is maintaining the contract unit in accordance with the HQS.
- b. The contract unit is leased to the tenant. The lease is in accordance with this contract and program requirements.
- c. The contract rent does not exceed rents charged by the owner for other comparable unassisted units.
- d. Except for the housing assistance payment and the tenant rent as provided under the HAP contract, the owner has not received and will not receive any payments or other consideration (from the family, the HA, HUD, or any other public or private source) as rent for the contract unit. (However, the owner may receive the subsidy under the subsidy program checked on Part A of this contract.)
- e. The family does not own or have any interest in the contract unit. If the owner is a cooperative, the family may be a member of the cooperative.
- f. To the best of the owner's knowledge, the members of the family reside in the contract unit, and the unit is the family's only residence.

12. Security Deposit

- a. The owner may collect a security deposit from the tenant.
- b. When the family moves out of the contract unit, the owner, subject to State and local law, may use the security deposit, including any interest on the deposit, in accordance with the lease, as reimbursement for any unpaid tenant rent, damages to the unit or other amounts that the tenant owes under the Lease.
- c. The owner must give the tenant a written list of all items charged against the security deposit, and the amount of each item. After deducting the amount, if any, used to reimburse the

owner, the owner must promptly refund the full amount of the unused balance to the tenant.

13. Prohibition of Discrimination

In accordance with applicable equal opportunity statutes, Executive Orders, and regulations:

- a. The owner must not discriminate against any person because of race, color, religion, sex, national origin, age, familial status, or disability in connection with this contract.
- b. The owner must cooperate with the HA and HUD in conducting equal opportunity compliance reviews and complaint investigations.

14. Rights of HA if Owner Breaches the HAP Contract

- a. Any of the following actions by the owner (including a principal or other interested party) is a breach of the HAP contract:
 - i. If the owner has violated any obligation under this HAP contract, including the owner's obligations to maintain the contract unit in accordance with the HQS.
 - ii. If the owner has violated any obligation under any other housing assistance payments contract under Section 8.
 - iii. If the owner has committed fraud, bribery or any other corrupt or criminal act in connection with any Federal housing assistance program.
 - iv. For projects with mortgages insured by HUD or loans made by HUD, if the owner has failed to comply with the regulations for the applicable mortgage insurance or loan program, with the mortgage or mortgage note, or with the regulatory agreement; or if the owner has committed fraud, bribery or any other corrupt or criminal act in connection with the mortgage or loan.
 - v. If the owner has engaged in drug-trafficking.
- b. If the HA determines that a breach has occurred, the HA may exercise any of its rights or remedies under the HAP contract. The HA shall notify the owner of such determination, including a brief statement of the reasons for the determination. The notice by the HA to the owner may require the owner to take corrective action (as verified by the HA) by a time prescribed in the notice.
- c. The HA's rights and remedies against the owner under the HAP contract include suspension of housing assistance payments, abatement or other reduction of housing assistance payments, termination of housing assistance payments, and termination of the HAP contract.
- d. The HA's exercise or non-exercise of any remedy for owner breach of the HAP contract shall not constitute a waiver of the right to exercise that or any other right or remedy at any time.

15. HA and HUD Access to Premises and Owner Records

- a. The owner must provide any information pertinent to the HAP contract the HA or HUD may reasonably require.
- b. The HA, HUD and the Comptroller General of the United States shall have full and free access to the contract unit and the premises, and to all accounts and other records of the owner that are pertinent to the HAP contract, including the right to examine or audit the records, and to make copies. The owner must grant such access to computerized or other electronic records, and to any computers, equipment or facilities containing such records, and must provide any information or assistance needed to access the records.

16. Exclusion of Third Party Rights

- a. The HA does not assume any responsibility for injury to, or any liability to, any person injured as a result of the owner's action or failure to act in connection with the implementation of the HAP contract, or as a result of any other action or failure to act by the owner.
- b. The owner is not the agent of the HA, and the HAP contract does not create or affect any relationship between the HA and any lender to the owner or any suppliers, employees, contractors or subcontractors used by the owner in connection with implementation of the HAP contract.
- c. Nothing in the HAP contract shall be construed as creating any right of the family or other third party (other than HUD) to enforce any provision of the HAP contract, or to assert any claim against HUD, the HA or the owner under the HAP contract.

17. Conflict of Interest

- a. **Prohibited interest.** The following classes of persons may not have any direct or indirect interest in the HAP contract:
 - i. Any present or former member or officer of the HA (except a participant commissioner);
 - ii. Any employee of the HA, or any contractor, subcontractor or agent of the HA, who formulates policy or who influences decisions with respect to the programs;
 - iii. Any public official, member of a governing body, or State or local legislator, who exercises functions or responsibilities with respect to the programs; or
 - iv. Any member of the Congress of the United States.
- b. **When prohibition applies.** The prohibition of such interest shall apply during tenure as a member of such classes, and for one year thereafter.
- c. **Owner certification.** Owner certifies that no person has or will have a prohibited interest, at execution of the HAP contract, or during the HAP contract term.
- d. **Disclosure.** The owner shall be responsible for assuring that any member of such classes promptly discloses their interest or prospective interest to the HA and HUD.
- e. **Waiver.** The conflict of interest prohibition under this section may be waived by the HUD Field Office for good cause.

18. Assignment of the HAP Contract

- a. The owner may not assign the HAP contract to a new owner without the prior written consent of the HA. The HA may deny approval to assign the HAP contract to a new owner (in whole or in part):
 - i. If directed by HUD because:
 - (1) The federal government has instituted an administrative or judicial action against the owner for violation of

the Fair Housing Act or other federal equal opportunity requirements, and such action is pending; or

- (2) A court or administrative agency has determined that the owner violated the Fair Housing Act or other federal equal opportunity requirements.
- ii. If the proposed assignee:
 - (1) Has violated obligations under a housing assistance payments contract under Section 8 (42 U.S.C. 1437f);
 - (2) Has committed fraud, bribery or any other corrupt or criminal act in connection with any federal housing program;
 - (3) Has engaged in drug-trafficking;
 - (4) Has a history or practice of non-compliance with the HQS for units leased under the Section 8 tenant-based programs, or with applicable housing standards for units leased with project-based Section 8 assistance or leased under any other federal housing program;
 - (5) Has a history or practice of renting units that fail to meet State or local housing codes; or
 - (6) Has not paid State or local real estate taxes, fines or assessments.
 - b. The assignee must agree to comply with the HAP contract. The agreement must be in writing, and in a form acceptable to the HA. The transferee must give the HA a copy of the executed agreement.

19. Written Notices

When this HAP contract requires any notice by the HA or the owner, the notice must be in writing.

20. Entire Agreement; Interpretation

- a. The HAP contract contains the entire agreement between the owner and the HA.
- b. The HAP contract shall be interpreted and implemented in accordance with HUD requirements.

21. Warranty of Capacity

The party who is executing this HAP contract warrants that such party has authority to execute the HAP contract on behalf of the owner.

Instructions for Use of

Form HUD-52535.4, Part A, and Form HUD-52535.5, Part B, of the Certificate Housing Assistance Payments Contract, Subsidized Unit Version

The Certificate Housing Assistance Payments Contract, Part A, Subsidized Unit Version (form HUD-52535.4) and Part B, Subsidized Unit Version (form HUD-52535.5) shall be used for a new Certificate HAP contract for subsidized units executed by HAs. This contract provides for changes in the Section 8 contract rent to conform to the subsidized rent for the project. This Certificate HAP contract, form HUD-52535.4 and 52535.5, may only be used on behalf of Section 8 certificate holders who select units in the following types of subsidized projects: Section 221(d)(3) BMIR,

Section 202 (other than a Section 202/8 unit), Section 236 (insured or noninsured including HFDA), FmHA Section 515 (other than FmHA/Section 8 unit) or State or locally subsidized. This instruction sheet will be used for computing rent adjustments pursuant to HUD requirements for Section 8 certificate program families residing in the subsidized units under either: (1) HAP Contract for subsidized unit, dated 10-82, distributed June 17, 1983, (2) HAP Contract for subsidized unit form HUD-52535A, dated 5-84, or (3) HAP Contract, Subsidized Unit Version, form HUD-52535.4 and 52535.5.

Computing Rent

1. Subsidized Rent. When a unit is placed under HAP contract, using the HAP contract for a subsidized unit, the contract rent paid to the owner is based on the **subsidized rent** for the unit. The subsidized rent is determined by HUD for each subsidy program.

2. Initial Contract Rent.

a. **Initial leasing of unit.** When the subsidized unit is initially leased to a Section 8 certificate holder, the maximum gross rent for the unit may not be more than the Fair Market Rent (FMR) limitation.

Subject to the FMR and rent reasonableness limitations, the initial contract rent is equal to the subsidized rent.

b. **Renewal of lease of subsidized unit.** After the initial Section 8 leasing of the subsidized unit, rent determination is no longer subject to the FMR limitation. On each execution of a new HAP Contract for the same family continuously occupying the same unit, the initial contract rent is equal to the subsidized rent. The determination of rent is treated as a rent adjustment, under the rules stated below.

3. Rent Adjustments

a. After the beginning of the HAP contract term (for the initial leasing of unit with Section 8 assistance), the amount of the contract rent adjusts automatically when the subsidized rent is changed. The adjusted contract rent is equal to the subsidized rent.

b. Regular certificate program rent adjustment procedures do not apply. The contract rent is not adjusted by application of the published annual adjustment factor to the contract rent. However, adjustment of contract rents in accordance with changes in the subsidized rent is subject to the rent reasonableness limitation. Adjustments may not result in material differences between the rents changed for assisted and comparable unassisted units as determined by the HA.

c. Since changes in the contract rent occur whenever there are changes in the subsidized rent, there is no specified time or minimum interval for adjustment of the contract rent. The contract rent is adjusted whenever the subsidized rent is changed.

Determination of Rent in Certain Subsidized Programs

The subsidized rent for a Section 8 certificate program unit under the HAP contract in subsidized projects shall be determined as follows:

1. Section 236 (insured and noninsured, including HFDA).

The subsidized rent is the monthly rental charge for the unit. Generally, the rental charge is the greater of (i) 30 percent of adjusted income, or (ii) the basic rent for the unit (for insured projects, see Section 236.55(b)).

2. Section 221(d)(3) BMIR.

The subsidized rent is the BMIR rent for the unit.

3. Section 202 (not including Section 8/202).

The subsidized rent is the rent for the unit as approved by HUD in accordance with the Regulatory Agreement.

4. FmHA Section 515 (not including a FmHA Section 8 unit).

The subsidized rent is the basic rental rate for the unit as approved by the FmHA.

5. State or locally subsidized.

For cases involving a Section 8 certificate program tenant in a State or locally subsidized unit, the HUD Field Office shall request instruction from the Headquarters, Office of Rental Assistance, on the types of subsidy programs covered by these instructions, and on the procedure for computation of the subsidized rent.